

MONTANA LEGISLATIVE HISTORY

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Bill H _____ S 521 Original bill & history / c

H. Committee on Int. Relations

S. Committee on Energy

Hearing Date(s) 4/3 / c

Hearing Date(s) 3/27 / c

Exec. Action 4/3 _____ c

Exec. Action 3/27 / c

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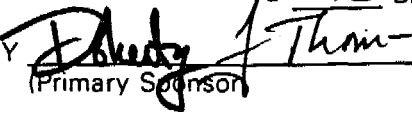
Did this bill originate in an interim committee? _____ Yes / No

Committee _____

Report _____

SENATE BILL NO. 521

INTRODUCED BY


(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE EMERGENCY POWERS OF THE GOVERNOR; REVISING THE DEFINITION OF "ENERGY EMERGENCY"; CLARIFYING THE ENERGY EMERGENCY POWERS OF THE GOVERNOR; AMENDING SECTIONS 90-4-302 AND 90-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 90-4-302, MCA, is amended to read:

"90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for the marketing of petroleum products and that has a total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy or a price of energy that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users.

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government

1 agency, joint operating agency, or any other entity, public or private, however organized.

2 (8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline
3 used for the transportation of petroleum products or their derivatives. This definition does not include
4 pipelines used to transport crude petroleum from producing wells to refineries.

5 (9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene
6 and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels,
7 whether in natural or synthetic form.

8 (10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product
9 into the state distribution system. Any person who is considered to be a Montana prime supplier by the
10 U.S. department of energy is included in this definition.

11 (11) "Refiner" means a person that owns, operates, or controls the operations of one or more
12 refineries located in Montana.

13 (12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable
14 feedstock or manufactures refined petroleum products, except when the plant exclusively produces
15 petrochemicals."

16

17 **Section 2.** Section 90-4-310, MCA, is amended to read:

18 **"90-4-310. Energy emergency powers of governor.** In addition to existing powers and duties, the
19 governor has the following duties and special energy emergency powers, subject to the definitions and
20 limitations in this part:

21 (1) The governor may, upon finding that a situation exists that threatens to seriously disrupt or
22 diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition
23 or state of energy emergency, at which time all of the general and specific emergency powers enumerated
24 in this section become effective.

25 (2) The condition of energy emergency terminates after 45 consecutive days unless extended by
26 a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a
27 duration to be established by the legislature.

28 (3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that
29 effect by either of the following:

30 (a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may:

(a) implement programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy. However, in so doing, the governor ~~shall~~ may impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency.

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) This part does not mean that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required under this part or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, this part does not exempt a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor; or unless impossibility of compliance is a direct result of an order of the governor."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on March 27, 2001 at 3:15 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Tom Zook (R)

Members Excused: Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 517, 3/23/2001; SB 518,
3/26/2001; SB 521, 3/26/2001
Executive Action: SB 512; SB 502; SB 503; SB
509; SB 515; SB 517; SB 518;
SB 521; HB 564

HEARING ON SB 517

Sponsor: SENATOR DON RYAN, SD 22, Great Falls

Proponents: Greg Groepper, Energy Share

Jim Mockler, Montana Coal Council, supported coal fired facilities. The purpose of the coal board is to help communities set up evaluations in advance. With regard to coal bed methane, he noted that it is gas, not coal.

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR COBB cited that coal board grants are one time grants.

HEARING ON SB 521

Sponsor: SENATOR STEVE DOHERTY, SD 24, Great Falls

Proponents: None

Opponents: None

Opening by Sponsor:

SENATOR STEVE DOHERTY, SD 24, Great Falls, declared that the bill clarified the energy emergency powers of the Governor. The Governor would be given broad powers in the event of an energy emergency.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR RYAN asked if there were any budgetary powers associated with the emergency power granted to the Governor. SENATOR DOHERTY responded there were not specific budgetary powers included. The powers would include gathering information and ordering people to do certain things based on that information. In addition, the authority to subpoena documents, place witnesses under oath, and the coordination of investigations are other included powers. SENATOR RYAN understood there would be a \$12 million cap allowed to the governor to add on as a supplemental for the next biennium. He wondered about the ability to avoid paying current environmental laws. SENATOR DOHERTY answered there were abilities to do specific things in extraordinary circumstances. However, this bill would not affect current law.

SENATOR RYAN purported that the default supplier currently has to supply power to the people on their system with the low rate. He asked if the Governor could order conservation by those people, then turn around, and sell the saved power to benefit businesses.

SENATOR DOHERTY had not considered that scenario.

SENATOR TOM ZOOK believed the bill would become effective only if life, health, or property became jeopardized. **SENATOR DOHERTY** responded that energy emergency services included curtailing essential services, producing essential goods, and disruption of significant sectors of the economy. There isn't a specific trigger. **SENATOR ZOOK** wondered how the loss of jobs would apply to that definition. **SENATOR DOHERTY** exclaimed that the definition of energy emergency included having a shortage of energy resulting in significant sectors of the economy being disrupted. In that case, the government would have extraordinary powers.

SENATOR BEA MCCARTHY questioned the sponsor about an energy supply alert in relation to the summer of 2000 when the Bitterroot fires barely missed the Bonneville Power Administration (BPA) power lines. **SENATOR DOHERTY** replied that had the fires knocked out the power in that area, the situation would have qualified as an energy emergency situation.

SENATOR ROYAL JOHNSON asked what was different about energy supply alert and energy emergency. **SENATOR DOHERTY** thought the energy emergency law was a staged response. **SENATOR JOHNSON** wondered if he and the Majority Leader had considered what the price of energy would be to qualify as an emergency. **SENATOR DOHERTY** responded it would result in the curtailment of essential services, production of essential goods, or destruction of significant sectors of the economy.

Closing by Sponsor:

SENATOR DOHERTY thought it might be a good idea to insert "or the price of energy" in subsection 6.

EXECUTIVE ACTION ON SB 512

Motion: **SENATOR MCCARTHY** moved that SB 512 DO PASS.

Substitute Motion/Vote: **SENATOR HALLIGAN** made a substitute motion and moved **AMENDMENT SBO51201.AJM, EXHIBIT(ens69b02)**. Substitute motion carried 10-0. **SENATOR COREY STAPLETON** was excused.

professed that the only people to pay are those currently on the default supplier.

Mr. Everts explained page 3, line 23 and said it was limited to MPC and possibly PacifiCorp as the utilities required to raise their rates.

Vote: Motion failed 2-9 with McCarthy and Ryan voting aye.

EXECUTIVE ACTION ON SB 518

Motion/Vote: SENATOR JOHNSON moved that SB 518 BE TABLED. Motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.

EXECUTIVE ACTION ON SB 517

Motion/Vote: SENATOR STAPLETON moved that SB 517 BE TABLED. Motion carried 9-2 with McCarthy and Ryan voting no.

EXECUTIVE ACTION ON SB 521

Motion: SENATOR ELLIS moved that SB 521 DO PASS.

Substitute Motion/Vote: SENATOR DOHERTY made a substitute motion THAT "OR THE PRICE OF ENERGY" BE INSERTED AFTER "SUPPLIES" ON PAGE 1, LINE 26. Substitute motion carried 10-1 with Zook voting no.

Discussion:

SENATOR ZOOK felt that it would be of benefit to be an attorney with regard to the bill and amendment. There could be a lot of room for argument. **SENATOR STAPLETON** agreed.

SENATOR RYAN assumed that natural gas was included and wondered if anyone from the Governor's office had said what they planned to do with the expansion of power. **SENATOR DOHERTY** was not aware of that.

SENATOR DOHERTY thought the act would give the Governor broad powers to investigate and order that energy be moved around. The Governor felt that the law needed to be clarified with regard to the trigger.

SENATOR RYAN referred to page 3, line 8, and was worried about the price. **SENATOR DOHERTY** said there wasn't a level, but that was existing law. If the Governor were to use these powers, she would have to contend with many different variables.

Substitute Motion/Vote: **SENATOR JOHNSON** made a substitute motion that **SB 521 BE TABLED**. Substitute motion failed 2-9 with Johnson and Zook voting aye.

Vote: Motion carried 10-1 with Johnson voting no.

EXECUTIVE ACTION ON HB 564

SENATOR HALLIGAN mentioned that there was a question whether the PSC had the authority to regulate the telecommunications cooperatives and others with respect to their USBC. **Martin Jacobson, PSC**, submitted written testimony from Bob Rowe, **EXHIBIT(ens69b06)**.

Motion: **SENATOR ELLIS** moved that **HB 564 BE CONCURRED IN**.

Substitute Motion/Vote: **SENATOR MCCARTHY** made a substitute motion and moved **AMENDMENT HB056401.ATE, EXHIBIT(ens69b07)**. Substitute motion carried 10-1 with Johnson voting no.

Vote: Motion carried 8-3 with Johnson, McNutt, and Taylor voting no.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT(ens69bad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on April 3, 2001 at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Stanley Fisher (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 506, 4/9/2001; SB 521,
4/9/2001; SB 513, 4/9/2001
Executive Action: SB 513, SB 506, SB 521

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

April 3, 2001

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bill, the formula for defining profit is more defensible and more manageable than it is in other bills. It is a good mechanism. We have heard that this is an inappropriate tax on Montana generators. That makes the question, are the prices that PPL is wanting to charge Montana businesses punitive and indiscriminate?

We have heard that this would have a chilling effect on economic development in Montana, yet deregulation, according to MPC, makes Montana more competitive in terms of economic development. We are now in a situation similar to California, where there is not expansion because of the volatility of the electricity prices. The prices that PPL has been charging have a chilling effect on the economic state of Montana from the standpoint of growth and stability. There is a compelling public interest that something be done to regulate, in some sense, the price of electricity in the state of Montana. This bill is constitutional. The constitutionality of imposing this tax can be found in Snead vs. Arizona and Baldwin vs. Montana Fish and Game Division. They are attempting to bring PPL to the table. Since PPL won't come to the table to work something out, we need legislation to make sure that we get a fair shake. They would like to deal with PPL in a equitable, fair and neighborly way. It is a sin to make money off of others' misfortunes.

HEARING ON SB 521

Sponsor: SENATOR STEVE DOHERTY, SD 24

Proponents: Patty Keebler, AFL-CIO

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, SD 24, said that this is a simple, straightforward bill. It simply amends the current statute that gives the Governor emergency powers in an energy crisis situation. It arises out of an act that was passed in 1978 to deal with the energy shortage in that decade. The bill clarifies that energy emergency means an existing, eminent, domestic, regional or national shortage of energy or a price of energy that will result in curtailment of essential services, production of essential goods or disruptions of significant sectors of the economy. All of that language is current law, with the exception of adding "or a price of energy." It would clarify the Governor's powers to include that issue.

Proponents' Testimony:

010403FEH_HM1

Patty Keebler, AFL-CIO, supports this bill.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 46.7}

REPRESENTATIVE DOUG MOOD asked, in the Energy Emergency Act, does it allow that emergency situation to take place for 45 days.

SENATOR DOHERTY said that was correct. At the end of that 45 day period, the energy emergency stops, unless the legislature, by an affirmative act, intercedes and by resolution or act says that they believe the conditions exist for a continuation of the energy emergency and the Governor's powers need to be extended beyond the 45 day period.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 48.1}

SENATOR DOHERTY said that the bill is very straightforward. It adds yet another tool in the toolbox for the Governor.

EXECUTIVE ACTION ON SB 521

Motion: REP. DELL moved that SB 521 BE CONCURRED IN.

Discussion:

REP. STORY questions if we want to leave energy prices a permanent fixture in the Emergency Powers Act or if we want it to sunset. He doesn't have any strong feelings one way or the other.

Motion/Vote: REP. DELL moved that SB 521 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 506

Motion: REP. STORY moved that SB 506 BE CONCURRED IN.

Motion: REP. STORY moved that AMENDMENT BE ADOPTED.

Discussion: